

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of CHARLENE E. CHATTAMS and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 99-2426; Submitted on the Record;
Issued January 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On December 30, 1998 appellant, then a 42-year-old supervisor, filed an occupational disease claim alleging that she sustained stress in the performance of duty. By decision dated March 11, 1999, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an emotional condition causally related to compensable factors of employment.¹

In a letter dated April 10, 1999, appellant requested reconsideration of her claim. By decision dated April 20, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant review of the prior decision.

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of her federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's

¹ Appellant filed a prior occupational disease claim for cancer and stress which she attributed to problems at work. The Office assigned the case File Number A9-429009 and denied the claim on the grounds that the medical evidence was insufficient to establish that she sustained an emotional condition causally related to a compensable factor of employment.

emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

Appellant attributed her stress, in part, to harassment by her supervisors. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁹ In the present case, an official with the employing establishment denied knowledge of the incidents referred to by appellant as constituting harassment and appellant has not submitted sufficient evidence to establish that she

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

was harassed or discriminated against by her supervisors.¹⁰ Appellant alleged that Ms. Payne, the postmaster, belittled her in front of her coworkers and tried to prevent her from receiving a merit pay increase. She further maintained that Ms. Payne and Ms. LaCalamente constantly told her that she did not know what she was doing. Appellant, however, provided no corroborating evidence, such as witness statements to establish that the statements actually were made or that the actions actually occurred.¹¹ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant received a letter of warning from the postmaster on October 29, 1998 and a letter of concern from the postmaster on July 27, 1998. The Board has held that disciplinary actions, including counseling and letters of warning, do not involve an employee's regular or specially assigned duties and, absent evidence of error or abuse, do not constitute compensable employment factors.¹² Appellant has presented no evidence of administrative error or abuse and, therefore, has not established a compensable factor of employment.

Many of appellant's allegations concern problems with the manner in which the postmaster, Ms. Payne, performed her function as manager. The Board has held, however, that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹³

The Office properly found that appellant's working extra days, training a replacement supervisor, finding substitutes for times when she was not at work and dealing with an altercation between two employees constituted compensable factors of employment as they relate directly to appellant's regularly or specially assigned duties or a requirement imposed by the employment.¹⁴ However, appellant's burden of proof is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to an accepted compensable employment factor.¹⁵

In a report dated July 18, 1998, Dr. Margaret M. Dunn, a Board-certified surgeon, related that appellant was currently in remission from breast cancer but that it was "essential to her continued well-being to avoid fatigue and reduce stress. I had advised her to avoid work on

¹⁰ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹¹ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹² *Gregory N. Waite*, 46 ECAB 662 (1995).

¹³ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁴ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁵ See *William P. George*, 43 ECAB 1159, 1168 (1992).

June 15 through 20, 1998 in order to correct and replenish her physical state.” Dr. Dunn did not provide a diagnosis of a psychiatric condition or attribute appellant’s need to reduce stress to any factors of her federal employment. Thus, her opinion is of diminished probative value.

In a report dated December 4, 1998, Dr. Dunn related that she had treated appellant since November 1995 and that she was status postlumpectomy and radiation therapy for carcinoma of the breast. Dr. Dunn related that appellant had undergone a second biopsy on November 30, 1998, which showed a “worsening of her chronic lymphedema.” She noted that appellant’s employment duties involving use of her left upper extremity “negatively impacted” her chronic lymphedema and further noted that she should minimize stress. Dr. Dunn did not attribute any stress to specific factors of appellant’s federal employment and, therefore, her opinion is of little relevance to the issue at hand.¹⁶

As appellant has not provided a rationalized report, based on a complete background, relating a specific compensable factor of employment to a diagnosed emotional condition, she has not met her burden of proof.

The Board further finds that the Office denied appellant’s request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁷ Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.¹⁸

In support of her request for reconsideration, appellant submitted copies of her time cards, which she alleged showed that she was required to work on her scheduled day off. However, the Office previously found that appellant’s working extra days constituted a compensable factor of employment.¹⁹ Appellant’s argument is cumulative in nature and, therefore, insufficient to warrant a reopening of her claim for merit review.²⁰

¹⁶ Further, Office procedures provide that a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(6) (June 1995).

¹⁷ 20 C.F.R. § 10.606(b)(2).

¹⁸ 20 C.F.R. § 10.608(b).

¹⁹ The Office noted that it accepted that appellant worked the extra days but not that she was forced to do so by the employing establishment.

²⁰ *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

Appellant further submitted a copy of a letter from the employing establishment on workplace violence. However, the relevant issue is whether the medical evidence establishes that appellant has sustained an emotional condition causally related to a compensable employment factor. The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²¹

The decisions of the Office of Workers' Compensation Programs dated April 20 and March 11, 1999 are hereby affirmed.

Dated, Washington, DC
January 26, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

²¹ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).